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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,949	04/03/2001	Robert Jean Legro	24544	9571

20529 7590 09/23/2002

NATH & ASSOCIATES  
1030 15th STREET  
6TH FLOOR  
WASHINGTON, DC 20005

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/806,949

Applicant(s)

LEGRO ET AL.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3000

*pmP*

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.s. Patent No. 4,198,782 to Kydonieus et al.

Regarding Claim 1, Kydonieus teaches a method for protection of germinating seed coated with a pesticide (Col. 4 line 19-22), characterized in the seed-containing pellets and pesticide-containing pellets are sown as individual pellets at the same time (Fig. 4 #15 and 16).

Regarding Claim 2, Kydonieus teaches that the pesticide-containing pellets have substantially the same shape and size as the seed-containing pellets (Kydonieus Fig. 4 # 15 and 16).

Regarding Claim 3, Kydonieus inherently teaches pesticide-containing pellets comprise a dose of pesticide that is sufficient for one seed germ

Regarding Claim 4, Kydonieus teaches the pesticide-containing pellets contain a filler material (Kydonieus Col. 3 line 68).

Regarding Claim 6, Kydonieus teaches a pesticide-containing pellet to be used in the combination with a seed-containing pellet (Kydonieus Col. 3 line 55-62 and Col. 4 line 19-22).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent No. 4,198,782 to Kydonieus.

Regarding Claim 5, Kydonieus discloses that the pesticide-containing pellets and the seed-containing pellets have a substantially uniform diameter (Fig. 4 #15 and 16), but is silent on the range from 0.5-5mm. However, it would have been obvious to one of ordinary skill in the art to modify the teachings to accommodate different seed varieties.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canadian Patent 1143651 to Lemon in view of U.S. Patent No. 4,198,782 to Kydonieus.

Regarding Claim 1, Lemon teaches a method for protection of germinating seed, characterized in the seed-containing pellets and pesticide-containing pellets are sown as individual pellets at the same time (Lemon page 1 line 9, 10, 13; page 2 line 14-15; page 3 line 11-15). Lemon is silent on the seed being coated with pesticide. However, Kydonieus teaches a seed coated with pesticide (Kydonieus Col. 4 line 20-21). Furthermore, It is old and notoriously well-known in the art of plant husbandry to coat seeds with pesticide. It would have been obvious to one of ordinary skill in the art to

modify the teachings of Lemon for the enhanced effect of the additional pesticide to further fight pests.

Regarding Claim 2, Lemon teaches that the pesticide-containing pellets have substantially the same shape and size as the seed-containing pellets (Lemon page 1 line 9-10).

Regarding Claim 3, Lemon teaches pesticide-containing pellets comprise a dose of pesticide that is sufficient for one seed germ (Lemon page 1 line 13-19).

Regarding Claim 4, Lemon teaches the pesticide-containing pellets contain a filler material (Lemon page 4 line 20-22).

Regarding Claim 5, Lemon discloses that the pesticide-containing pellets and the seed-containing pellets have a substantially uniform diameter from 0.5-5mm (Lemon page 3 line 25).

Regarding Claim 6, Lemon teaches a pesticide-containing pellet to be used in the combination with a seed-containing pellet (Lemon page 1 line 9, 10, 13; page 2 line 14-15; page 3 line 11-15).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Examiner maintains that Canadian Patent to Lemon teaches that the pesticide pellets and seed pellets are substantially the same size and shape (Lemon page 3 line 11-12). Furthermore, examiner maintains that Lemon teaches a precise, controlled and uniform treatment application (Lemon page 3 line 11-26).

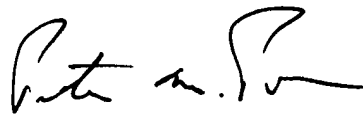
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV  
September 18, 2002



PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3000